

FINANCIAL INSTITUTIONS COMMITTEE MEETING
Business Law Section, State Bar of California

Meeting of June 13, 2006

Committee Members Present: John Hancock, Chair; Meg Troughton, Vice Chair; Rosie Oda, Secretary; Michael Abraham; Bruce Belton; Sally Brown; Andrew Druch; Jim Dyer; Linda Iannone; Todd Okun; Allan Ono; Brad Seiling; Keith Ungles; and Richard Zahm.

Advisory Members and Others Present: Gino Chilleri; Clay Coon; John Drews; Ted Kitada; Bob Mulford; Teryl Murabayashi; Michael Occhiolini; Isabelle Ord; Mary Price; Jim Rockett; Kenneth Scott; Steven Takizawa; Gerry Tsai; Maureen Young.

Committee Members Absent: Leland Chan; Laura Dorman; Bart Dzivi; Mark Gillett; Jay Gould; Rob Hale; Randy Kennon; Ken Krown; Rosemary Lemmis; Russ Schrader; and Bob Stumpf.

Call to Order: Our Chair John Hancock of World Savings called the meeting to order at 9:35 A.M.

Welcome to Members and Advisory Members: John welcomed the Committee Members and the Advisory Members and asked each person to identify themselves and where they worked.

1. Approval of May 9, 2006 Minutes: The Committee approved the minutes of the May 9, 2006 meeting without objection.

2. Recent Events at the Department of Financial Institutions (“DFI”): John Drews, General Counsel of the DFI, reported that on May 26, 2006, an examiner’s laptop containing personal data on bank customers was stolen from his car in a random series of auto break-ins in the examiner’s residential neighborhood. The theft was reported to the proper authorities, including the Highway Patrol and the Office of Privacy Protection. The Governor’s Office demonstrated zero tolerance for the loss of unencrypted data by naming a new Acting Commissioner of DFI, Michael Kelly, who has had a long career in state government. The Acting Commissioner has been charged with reviewing and strengthening IT security at DFI and will serve until a permanent replacement is selected.

3. “Do Not Call” and Ryan Swanberg: Our Chair John Hancock reported that Mr. Swanberg, a nonlawyer and self-described “career plaintiff” according to an article that John distributed, has been sending banks draft complaints with requests to settle for their failure to send copies of their “Do Not Call” policies on a timely basis. John previously distributed the Federal Communications Commission rule on the subject, 68 Fed. Reg. 44144 (July 25, 2003). John explained that sending policies is a requirement of the “Do Not Call” law. The most difficult aspect of compliance with this law is figuring out what

officers in the bank are dialing for dollars since many sales representatives regard it as part of their job to make cold calls.

4. Class Action Fairness Act and Office of the Comptroller of the Currency

(“OCC”) Guidance: Isabelle Ord of Sheppard Mullin provided us with copies of the Act and of the OCC Bulletin 2006-20. The Act addresses perceived abuses with regard to this type of litigation. The Act requires that depository institutions notify their primary regulator of any class action settlement. The OCC’s Guidance says that national banks should send a notice to the proper OCC supervisory office and to its Director of Litigation within ten days of settlement. Each national bank should also establish a procedure to alert outside counsel about this requirement.

5. Net Neutrality: Rob Hale of World may discuss this in more detail at our next meeting, but John briefly outlined the issue. The House voted against including provisions in telecom legislation that would require net neutrality. The term “net neutrality” refers to the telecoms’ desire to charge users more for greater speed in internet traffic, or whether they should be required to treat all users of the internet equally. For banks, the question is whether their customers will be able to continue internet banking without problems, or whether there will be a loss of efficiency or greater expense. The bill is opposed by a diverse group that includes Moveon.org and gun organizations, and will now go to the Senate.

6. Da ECK Code: Electronic Check Conversion under Regulation E and NACHA:

Ted Kitada of Wells gave a detailed powerpoint presentation, which John previously distributed by email, on electronic check conversion (“ECK”), which is neither Hawaiian nor Da Vinci. Ted pointed out that for the first time, the merchant or payee is covered under Reg E for purposes of obtaining consent from the consumer. Bob Mulford pointed out that one of the purposes of the Reg was to allow consumers the opportunity to decline ECK. Ted also said that Wells would work with merchants to make sure that they comply with the requirements and that it was in Wells’ interest to do so. One result of the new requirements is that periodic statements will have to be re-rendered.

7. State Legislative Report: Bob Mulford’s handout was previously distributed by John, and he noted there was nothing to add beyond his extensive listing of new legislation. He noted that the proposed NCCUSL changes have gone through one house.

8. Federal Legislative Report: Bart Dzivi was unable to attend but has indicated that he will send out a summary report to the Committee.

9. Miscellaneous: John reminded us that there are eight open spots on the committee, and we discussed some potential new members.

10. Private Trust Companies: Rosie Oda of Pillsbury alerted us to the heavy marketing by out-of-state attorneys of private trust companies organized in income tax free states. In about twenty states, the Rule Against Perpetuities has been repealed or modified to allow perpetual or dynasty trusts, and in some states like South Dakota and

Delaware, this state legislation combined with offering asset protection trusts has made it possible for some to assert that income can be retained in one family for generations without being subject to estate taxes (or income taxes in states that do not require income tax), and be protected from divorce and bankruptcy. Some claim that the assets can be held in California and administered in states with these favorable trust laws. Under the OCC's Part 9, national banks can offer interstate trust offices as well as choice of law for trust customers. Rosie did not comment on the accuracy of these claims for California residents.

11. Adjournment: The meeting was adjourned at 11:00 a.m.